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Appl. No. 09/976,182
Amdt. Dated March 5, 2007
Reply to Office Action of December 4, 2006

• • R E M A R K S / A R G U M E N T S • •

The Official Action of December 4, 2006 has been thoroughly studied. Accordingly, the changes presented herein for the application, considered together with the following remarks, are believed to be sufficient to place the application into condition for allowance.

By the present amendment, independent claim 1 has been changed to recite that heights of all of the first and second elasticized zones is substantially equal throughout the front and rear waist-encircling regions.

This limitation is emphasizes how the first and second elasticized zones structurally and functionally cooperate to form cooperating forces around the waist-encircling direction.

Support for this limitation can be readily found in the drawings, including Figs. 1 and 2.

Also by the present amendment, claims 2 and 3 have been rewritten to be in independent form and new dependent claims 9 and 10 have been added which correspond to the limitations previously set forth in claims 2 and 3.

Entry of the changes to the claims is respectfully requested.

Claims 1-4, 9 and 10 are pending in this application.

Claims 1-4 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,931,827 to Buell et al.

Claims 4 and 8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Buell

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et al.

On page 3 of the Office Action the Examiner has objected to claims 2 and 3 as being dependent upon a rejected base claim. The Examiner states that claims 2 and 3 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Inasmuch as claims 2 and 3 have been rewritten in independent form, it is submitted that claims 2 and 3 are presently allowable as noted by the Examiner.

The Examiner states that:

Buell discloses a disposable pull-up undergarment, as shown in figure 1, comprising a liquid pervious topsheet 24, a liquid impervious backsheet 26, and an absorbent core 28. The undergarment has front and rear waist-encircling regions 28, a crotch region 30, a waist opening and a pair of leg openings. The front and rear waist-encircling regions 28 each comprise a first elasticized zone 64 and a second elasticized zone 60/62. The first and second elasticized zones have heights that extend in the longitudinal direction of the garment and are coextensive, as shown in figure 1. The first and second elasticized zones are adjacent each other in the waist-encircling direction of the garment, as shown in figure 1. The first and second elasticized zones are extensible, as disclosed in column 9, lines 19-46. The first elasticized zone is more extensible, and therefore has a greater tensile strength, than the second elasticized zone, as disclosed in column 15, lines 1-25, and column 16, lines 38-64.

The Examiner has relied upon Buell et al. disclosing:

...all aspects of the claimed invention but remains silent as to the exact elongation stress values of the first and second elasticized zones 28a and 28b.

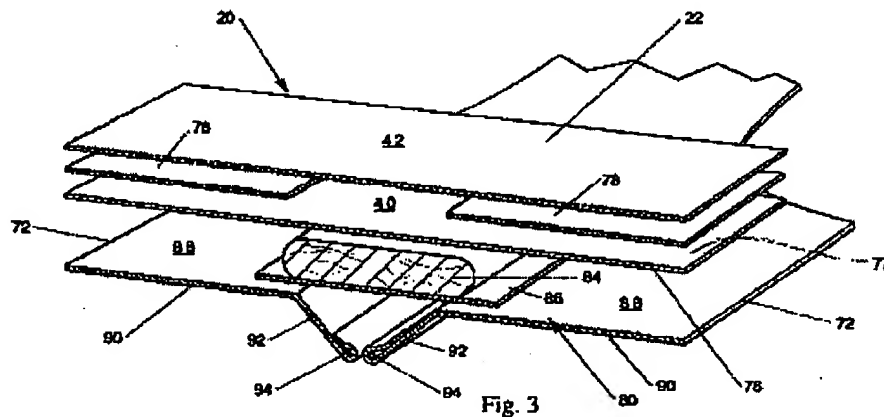
The Examiner takes the position that:

It would have been obvious....to make the first elasticized zone 28a with an

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elongation stress of 0.1-2.0 N/25mm and the second elasticized zone 28b with an elongation stress of 0.1-0.6 N/25mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routing [sic] skill in the art. *In re Aller*, 105 USPQ 233.

It is noted that the "second elasticized zone 60/62" that the Examiner has relied upon in Buell et al. includes the elastic waist feature 50 and the superimposed structure of the first belt layer 42 and the underlying chassis 40 as shown in Fig 3 of Buell et al.:



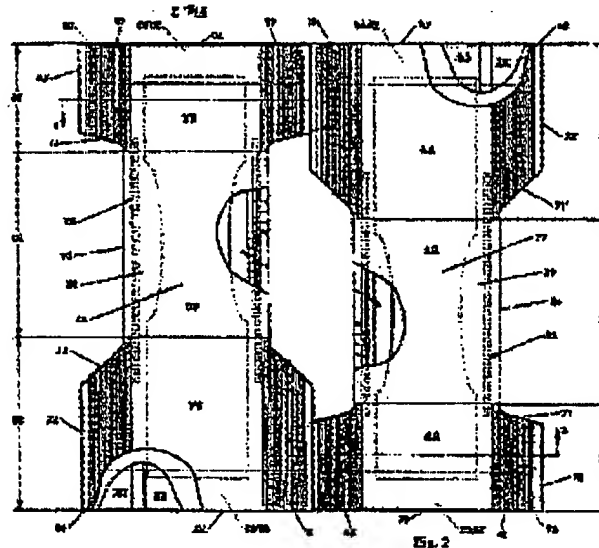
It is noted that the elastic panels 78 (78') are only provided in the side panels. In this regard, Buell et al. is particularly concerned with ensuring that the medial panels 62 (62') do not gather against the absorbent core. Therefore, Buell et al. does not provide any elastic panels in the area of the medial panels 62 (62').

As shown in all the figures of Buell et al., the longitudinal height of the back or rear

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region 28 of Buell et al. is substantially greater than the longitudinal height of the front region 26.

Accordingly, as show in the following figure which is a side-by-side comparison of the back and front regions of Buell et al. (with one figure inverted), Buell et al. fails to teach first and second elasticized zone in the front and rear waist-encircling regions that have heights that are substantially equal throughout the front and rear waist-encircling regions, as required by applicants' independent claim 1.



Therefore, Buell et al. cannot be relied upon as anticipating applicants' claimed invention.

Because the heights of the first and second elasticized zones are not substantially equal in Buell et al. throughout the front and rear waist-encircling regions, the force collectively created by the elasticized zones cannot be uniform throughout the first and second elasticized

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zones. For example, there would definitely be a gradient in the waist-encircling force along leg edges 71' (See Fig. 2) due to the shape of the elastic panel 78' which is tapered along leg edges 71'.

In contrast, applicants' first and second elasticized zones structurally and functionally cooperate to form cooperating forces around the waist-encircling direction.

It is noted that the Examiner's reference to "first and second elasticized zones 28a and 28b" in Buell et al. is not understood, because Buell et al. does not teach first and second elasticized zones 28a and 28b.

In Buell et al. reference numeral 28 identifies the back region of the article as shown in Figs. 1-2.

Based upon the above distinctions between Buell et al. as relied upon by the Examiner and the present invention, and the overall teachings of Buell et al., properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon Buell et al. as required under 35 U.S.C. §102 as anticipating applicants' claimed invention.

Moreover the Examiner cannot rely upon Buell et al. as required under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

It is, therefore, submitted that any reliance upon Buell et al. would be improper inasmuch as Buell et al. does not remotely anticipate, teach, suggest or render obvious the present invention.

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It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of Buell et al. and the outstanding rejections of the claims should hence be withdrawn.

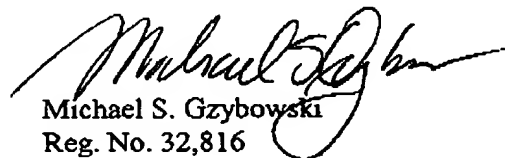
Therefore, entry of the present amendment and reconsideration and withdrawal of the outstanding rejections of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved; the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,


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